IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P.No. 17685 of 2005

Date of decision: 2-5-2007

M/s Imperial Fasteners Vs. State of Haryana and another

CORAM:- HON'BLE MR. JUSTICE K.S.GAREWAL
HON'BLE MR. JUSTICE AJAI LAMBA

Present: Shri Adarsh Jain, Advocate, for the petitioner.

Shri H.S.Hooda, Advocate General Haryana assisted by Sarvshir R.S.Kundu and Ashish Kapoor, Additional Advocate General Haryana.

Shri A.K.Pathania, Advocate for HSIDC.

K.S.GAREWAL,J.

Imperial Fastners Pvt. Ltd. (incorporated in 1982) owned 36 biswas 20 biswansi in khasra nos. 1173 and 1174 in Khandsa, District Gurgaon which was purchased in 1999. The company set up a unit to manufacture of high tensible fasteners, including nuts and bolts. The company constructed industrial sheds and office block, a generator shed, a store for scrap and finished goods, a laboratory and a shed for zinc plating. The total extent of construction was 44632.44 sq. ft. and the entire construction was completed before June 1, 2000. The company qualified as a small Small Scale Industrial Unit and was registered with the General Manager, District Industries, Gurgaon. The company had also obtained all other necessary registrations and licences.

The company was informed through letter dated 27-12-2000 (Annexure P-8) written by Director, Town and Country Planning that the

company's request for composition of unauthorised construction measuring 44632.44 sq. ft and grant of permission for change of land use for construction of industrial building measuring 7484.37 sq. yards was considered. It had been decided in principle to grant permission to change of land use (C.L.U.) and the company was required to fulfill certain conditions. Thereafter C.L.U. was granted on May 28, 2001 (Annexure P-9) on payment of Rs. 3,74,220/- as conversion charges, Rs. 2,29,027/- on account of composition fee and Rs. 19,92,715/- on account of external development charges.

The property of the petitioner company was sought to be acquired for the public purpose for development of an integrated complex for industrial, institutional, commercial, recreational and other public utilities vide notification dated November 15, 2002 (Annexure P-13). The petitioner company filed objections under Section 5-A on December 12, 2002 but these were apparently disregarded because on November 12, 2003 declaration under Section 6 was issued.

On August 14, 2004 the petitioner was informed by the Director of Industries that a Sub Committee that had been set up by the Government had considered the petitioner's case and recommended that land required for the road may be acquired and balance land be released.

Learned counsel for the petitioner accepts that the Committee had recommended the release of its constructed portions on the basis of hearing held on October 18, 2005 and the preliminary report of the committee dated October 30, 2005. The committee had also visited the site under acquisition on November 5, 2005 and made the following recommendations in respect of the petitioner:-

> "Existing unit already left out of acquisition the vacant land for which no change of land use was obtained is required for completing the essential infrastructure and integration with rest of the estate therefore, Committee recommends its acquisition."

The learned counsel for the petitioner has made two submissions. Firstly that under the High Powered Committee's report, properties of atleast four parties regarding whom the committee had recommended acquisition were later on released on August 23, 2006. The communications received by the respective parties from Director of Industries, releasing their properties were filed alongwith the replication as Annexure P-36 (Bina Mehra), P-37 (Naresh Kumar), P-38(M/s APS Industries) and P-39 (Kamal Gupta).

In Bina Mehra's case recommendation was at item No. 38 to the following effect:-

> " The site is necessarily required for widening of the road, to lay the essential infrastructure and for integrated planning therefore committee recommends its acquisition."

The recommendation in respect of Naresh Kumar at item No.37 was as under:-

> "The site is necessarily required for widening of the road, to lay the essential infrastructure and for integrated planning therefore committee recommends its acquisition."

We may not refer to the cases of APS Industries and Kamal Gupta case for the purpose of Imperial Fastners. The recommendation in favour of Bina Mehra and Naresh Kumar are most relevant because these parties held property in the same khasra number as Imperior Fastners. In

Bina Mehra's case land was released as the Government on consideration of the matter decided in principle to release the land as this had been initially recommended by the Sub Committee on February 13, 2004. Certain conditions were laid down for the release. Similarly in Naresh Kumar's case as well the release had been ordered on reconsideration of the matter as initially the Sub Committee too had recommended its release.

Learned counsel for the petitioner has shown us the site plan Annexure P-32, filed with the replication. This site plan accurately reflects the location of Imperior Fasteners and its adjoining plot. The main constructed portions consisting of the industrial shed and the office block are not under acquisition at all but it is the vacant plot adjacent to this portion which had come under acquisition. Roads pass through the acquired land in such a way that a tiny strip of the company's acquired land also falls across the road but a major part of the plot, adjacent to the factory, does not come under the road.

The second submission is that the company is willing to surrender the land which comes under the road on the basis of the lay out plan Annexure P-32, as well as surrender the narrow strip across the road but the property adjacent to its factory should released from acquisition.

Learned counsel for the respondents referred to Division Bench judgment of this Court in M/s D.M.& Co. Vs. State of Haryana and others (C.W.P.No. 1700 of 2006 decided on October 13, 2006). In D.M. & Co. case the petitioner had also placed reliance on the release of the land to Naresh Kumar and Kamal Gupta, just as reliance was placed on release of land two these parties, when the learned counsel referred to letters of release attached to the replication. The Division Bench relied on the

Supreme Court judgment in M/s Anand Buttons Ltd. Vs. State of Haryana 2005(1) RCR (Appeals) 224 to hold that the property of M/s D.M.& Co. could not be released. The Bench also found that the petitioner had not filed any representation against the acquisition before the authorities concerned, had not filed objections under Section 5-A of the Act, had not even filed any representation before the High Powered Committee. Therefore, the petitioner could not make a grouse of release of land to some other owners.

We feel that the present case is on a different footing because the petitioner was a company who had set up a manufacturing unit, obtained change of land use and were seeking release of an adjacent plot that had been acquired. Petitioners were not claiming release of the land which came under the two roads.

We have examined the merits of the petitioner vis-a-vis the respective merits of the cases of Bina Mehra and Naresh Kumar. We find that the petitioner's case for release of land is on much sounder footing. The petitioner is a genuine manufacturer who had set up the unit which is functioning and which was set up long before the acquisition proceedings began. The petitioner had been granted change of land use for its unit. It is true that this unit does not come under acquisition but the genuineness of the petitioner's claim cannot be doubted when one considers the merits of Bina Mehra's case. Neither of these two parties had any construction on the acquired land or on any unacquired land adjacent to it. The properties of both these parties had been recommended for acquisition but on reconsideration released by the Government. This fact stands fully established from Annexure P-36 and P-37.

Consequently, we need not delve to deeply into the matter

because we are convinced that the petitioner was unfairly treated by the Committee when recommendations were made for acquisition of its property. If the properties of Bina Mehra and Naresh Kumar could be released from acquisition then there was no reason why the petitioner's property should be acquired. We feel that a similar order should have been passed in the case of the petitioner as well. We, therefore, allow this petition and direct the release of the petitioner's property but only that part of it which does not come under the roads or the narrow strip beyond the road. For this purpose the accuracy of the layout plan Annexure P-32 must necessarily be determined before actual release is ordered.

This petition is allowed subject to the petitioner being required to observe all the conditionalities mentioned in Annexures P-36 and P-37.

(K.S.GAREWAL)
JUDGE

(AJAI LAMBA)
JUDGE

May 2, 2007
RSK